The National Land Code is a complete and comprehensive code of law governing the tenure of land in Malaysia and the incidents of it, as well as other important matters affecting land there, and there is no room for the importation of any rules of English law in that field except in so far as the Code itself may expressly provide for this.

For these reasons their Lordships will advise His Majesty the Yang di-Pertuan Agong that the appeals should be dismissed with costs.

Appeals dismissed.

Solicitors: *Philip Conway Thomas & Co,; Turner Kenneth Brown; Stephenson Harwood.*

SINGAPORE REPORTS

MOHAMED YEANIKUTTY v. FAR EAST TRUCK INC. MANUFACTURING (PTE.) LTD.

[C.A. (Kulasekaram, Lai Kew Chai & Abdul Wahab Ghows JJ.) May 24, 1984]
[Singapore – Civil Appeal No. 53 of 1982]

Labour Law – Employment – Injury in the course of – Damages – Whether respondents were negligent or in breach of the duty to take reasonable care for the safety of the appellant/servant – Factories Act 1973.

Tort – Negligence – Workman injured in course of employment – Whether employers in breach of Factories Act 1973 – Contributory negligence of co-workman – Employers vicariously liable.

The appellant claimed against the respondents, his employers, damages for personal injuries suffered by him in the course of employment on July 3, 1975. The appellant claimed that the respondents were negligent in (1) failing to provide a safe system of work; (2) failing to provide adequate appliances to enable the appellant to carry out the work; and (3) failing to provide any or adequate supervision. The learned Judge dismissed the appellant's claim in the lower court (see [1983] 1 M.L.J. 134) and the appellant appealed against the said judgment.

Held, allowing the appeal: (1) there was a duty owed to the appellant by each member of the gang to take reasonable care in the actual work of unstowing and in the method of work employed, and accordingly, even though the appellant tacitly consented to the method of unstowing contrary to instructions, the employers were liable vicariously for the negligence of his fellow workman;

(2) the respondents were vicariously liable for the negligence of Liam, another employee of theirs participating in the repair job. The appellant was also contributorily negligent and his share of the responsibility for the accident was one-half;

(3) as the sum of $85,000/- was agreed for special and general damages on a 100% basis, the damages recoverable by the appellant would be $42,500/-.

Case referred to:

(1) *Williams* v. *Port of Liverpool Stevedoring Co. Ltd. & Anor.* [1956] 1 W.L.R. 551.

COURT OF APPEAL.

Karuppan Chettiar and *Dr. Myint Soe* for the appellant.

Chelva Retnam Rajah and *Han Kee Fong* for the respondents.

Cur. Adv. Vult.

Abdul Wahab Ghows J. (delivering the Judgment of the Court): The appeal arises from a claim of Mohamed bin Yeanikutty (hereinafter called

"the Appellant") against Far East Truck Incorporated Manufacturing (Pte.) Ltd. (hereinafter called "the Respondents") for damages for personal injuries and consequential loss suffered by him and caused during the course of his employment by the Respondents as a mechanic on July 3, 1975 through the negligence of the Respondents, their servants or agents and/or breach by the Respondents of their duty to the Appellant as employers of the Appellant to take reasonable care for the safety of the Appellant as their servant and/or breach by the Respondents of statutory duty under the Factories Act 1973.

The particulars of breach of statutory duty are:—

(a) Failing to provide sufficient training or instructions in the process of work undertaken to the Appellant ... thereby exposing him to the dangers likely to arise in connection therewith contrary to section 28(1) (a) of the said Act;

(b) Failing to provide adequate supervision by a person who has a thorough knowledge and experience of the said lifting equipment contrary to section 28(1)(b) of the said Act.

The Appellant was employed as a mechanic by the Respondents. The Respondents were dealing in mechanical forklifts, their maintenance and repairs. On July 3, 1975, the Appellant and one Lim Hee Kian (hereinafter called "Lim") another employee of the Respondents, were instructed to repair an electric forklift at the premises of Philips Singapore Pte. Ltd. at Toa Payoh Singapore. The repair job was to replace an oil seal of the lifting cylinder.

According to the Appellant, Lim was supposed to do the repairs and he was to assist him. He said that he had had no experience with electric forklifts which has three layers, whereas the diesel forklifts which he usually handled had two layers. As stated in the statement of claim and supported by the evidence, the lifting equipment of an electric forklift consists mainly of three cylinders fitting into one another and by a hydraulic system these cylinders could be extended in a telescopic fashion. At the end of this system a pin at the top of the second or middle cylinder which fits into an aperture at the lower surface of the upper cross bar of the mast unit called "the third layer" and they are secured by means of a nut. The other end of this system is the lower end of the third or innermost cylinder which is secured to the lower cross bar of the mast unit called "the second layer". These mast units provide the right frame to give structural support in the lifting operation. The first or outermost cylinder in this hydraulic system may be moved up and down along the second cylinder.

At the material time the oil seal situated at the top of the first cylinder was leaking. According to the Appellant, to replace the oil seal, the nut at the top of the first cylinder has first to be unscrewed and slipped out of the second cylinder, thus exposing the oil seal which then has to be similarly slipped out of the second cylinder. Therefore it is necessary to free the top end of the second cylinder by removing the nut from the upper cross bar of "the third layer". To do this, "the third layer" has to be lifted to a certain height in order to have sufficient slack in the hydraulic system to allow the second cylinder to slip out of the aperture of the upper cross bar of "the third layer" and to have sufficient space to allow the nut end of the oil seal to be slipped out. A wooden block is placed between the lower cross bar of "the second layer" and the lower end of "the third layer" to prevent "the third layer" from dropping down when the oil seal is removed.

The Appellant said that on that day after placing the wooden block he lowered the third layer so that it rested on the block of wood. Then Lim asked him to go on top of the driver's seat to remove the nut at the top layer. While he was on top of the forklift Lim removed the chains of the machine and loosened a nut by using the handle of a hammer. Then Lim handed to him a screw driver, a special spanner and an iron pipe. The Appellant then unscrewed the nut at the top with the special spanner after which he wedged the iron pipe between the second and third layers to prevent the third layer from falling down in case the block of wood as the bottom gave way. After that the Appellant removed the nut completely.

The Appellant then described how he proceeded to replace the oil seal. Having removed the oil seal from the cylinder he saw the whole hydraulic unit falling away from him. He reached out to retrieve the said unit when suddenly the upper cross bar of the third layer dropped and crushed his arms against the upper cross bar of the second layer thereby causing him injury.

The particulars of the Respondents' negligence as set out in the statement of claim may be summarised as follows:—

(1) failing to provide a safe system of work;

(2) failing to provide adequate appliances to enable the Appellant to carry out the work; and

(3) failing to provide any or adequate supervision.

In their defence, the Respondents set out the procedure to be followed to effect changes to the oil seal which can be found in paragraph 7 of the Amended Defence.

The Respondents put the blame on the Appellant for the accident. They said that the Appellant had been fully trained by them to effect changes to the oil seal in the lifting cylinder of the forklift truck and had been instructed to adhere strictly to the procedures and also had the relevant experience in the procedures himself. The Appellant instead of adhering to step (6) of the procedure went against instructions and wedged a piece of piping in between the upper cross bars of the "second and third layers" to substitute the function of support which would otherwise have been provided by the wooden block placed in the inner side of the immovable part of the mast to support the raised portion. The iron pipe being an insecure support, slipped causing the mast to descend onto the hands of the Appellant while he was changing the oil seal. Furthermore, according to the Respondents, the Appellant did not adhere to step (8) of the operation, whereby the bolt on top of the machine should have been released by the Appellant from the floor area in front of the forklift. The Appellant instead climbed on to the overhead guard above the driver's seat behind the carriage, to effect the change of the oil seal.

The Appellant denied knowledge of the procedures enumerated by the Respondents in paragraph 7 of their Amended Defence. The learned trial judge said that he found the Appellant was an unreliable witness and would lie when it suited him. He said that there was ample evidence adduced by the Respondents to show that the Appellant was trained to repair and maintain either a diesel or an electric forklift. We accept the trial judge's findings of fact in this connection.

Lim did not give evidence in this case. But, according to paragraph 6 of the Amended Defence, as the Appellant had only one wooden block with him, Lim instructed the Appellant not to proceed accordingly. The Appellant disregarded these instructions and went on nevetheless to attempt to change the oil seal. Where did the Respondents get this story from? This was not what Lim told Mr. Tan Chin Seng, Respondents' solicitor, on July 3, 1975. Mr. Tan's report which is marked AB1 is as follows:—

"On the morning of the July 3, 1975 at about 10 a.m. Mohammed Bin Yeanikutty and Lim Hee Kian, mechanics in the employ of Fetim (Pte.) Ltd. visited the Philips factory at Lorong 1, Toa Payoh, Singapore, for the purpose of repairing a forklift truck supplied by their employers, Fetim (Pte.) Ltd.

The visit by the abovementioned employees was in answer to a request by Philips Pte. Ltd., to effect relevant repairs on the truck. On this occasion, both the above employees were attempting to change an oil seal in a cylinder of the forklift truck.

In order to effect the opertion, Mohammed Bin Yeanikutty climbed onto the overhead guard of the forklift truck whereby he would be in a position to uplift what was described as the "mask" of the machine. The forklift truck was then in the normal upright position.

On lifting the "mask" the cylinder located within the housing in the centre of the forklift would then be raised thereby exposing the oil seal.

The elevated mask and cylinder were then supported in their temporary positions by two wooden blocks placed at the base of the machine.

Mohammed Bin Yeanikutty from his position on the overhead guard, then placed his hands on the relevant part of the cylinder below the mask in order to change the oil seal.

Some time at this stage, the makeshift wooden supports at the bottom of the forklift truck slipped or gave way and the mask descended onto the hands of Mohammed Bin Yeanikutty.

It is believed at this stage that the hands of the above employee were almost completely severed. He had to be extricated from the machine and sent to Toa Payoh General Hospital where he is presently warded. The exact extent of his injuries was not revealed at the time of this report.

The above account was given by Mr. Lim Hee Kian, the other employee of Fetim (Pte.) Ltd. who was working jointly on the machine at the relevant time. Mr. Lim states that he was the only eye-witness to the incident and that he was at the base of the machine at the time the accident occurred.

This account of the accident was told to and recorded by Mr. Tan Chin Seng, solicitor acting on behalf of Fetim (Pte.) Ltd. on July 3, 1975."

Lim, in the statement, was reported to have said that two wooden blocks were placed at the base of the machine. Even the Respondents did not believe this. If two wooden blocks had been used this accident would not have happened. We are of the view that Lim was lying to avoid responsibility for the mishap. We are satisfied that Lim was not just

standing around while the Appellant was repairing the forklift alone and unaided. They went there together and were repairing the machine together and if the Appellant was negligent, as the Respondents averred, then Lim was just as negligent, if not more so, in view of Lim's familiarity with electric forklifts.

Lim was not called by the Respondents to give evidence although he had been subpoenaed by them. Apart from the Appellant, Lim was the only other person who could have assisted the court to determine what actually happened. We are satisfied that the Respondents did not call Lim to give evidence because they knew that his testimony would not help their case. If Lim was negligent the Respondents would be vicariously liable for his negligence because Lim was the Respondents' servant and his negligence in the course of his employment caused injuries to his fellow workman. The learned trial judge plainly failed to apply his mind to these matters. He did not consider the part played by Lim in the repair job at all.

In *Williams* v. *Port of Liverpool Stevedoring Co Ltd & Anor.*[1], the plaintiff who was a member of a gang of six workmen employed by a firm of master stevedores, sustained injuries when a number of bags of sodium carbonate, which formed the cargo of a barge being unloaded by the gang, fell upon him. The collapse of the bags was due to their instability arising from the method of unstowing adopted by the gang contrary to the express and repeated instructions of the hatch foreman in charge and others. The Plaintiff, who was of equal status with his fellow workmen in the gang, was himself expressly instructed to deal with the cause of the instability of the bags and warned of the danger they presented; but he ignored the instructions and he and the other members of the gang continued, in the absence of the hatch foreman, to unstow the cargo by their own method instead of in the manner in which they were instructed. It was held in this case that there was a duty owed to the plaintiff by each member of the gang to take reasonable care in the actual work of unstowing and in the method of work employed, and accordingly, even though the plaintiff tacitly consented to the method of unstowing contrary to instructions, the employers were liable vicariously for the negligence of his fellow workmen.

In the present case we find the Respondents vicariously liable for the negligence of Lim, another employee of theirs participating in this repair job. We also find that the Appellant was contributorily negligent and his share of the responsibility for the accident was one-half. Accordingly the appeal is allowed with costs here and in the court below. As the sum of $85,000/- was agreed for special and general damages on a 100% basis, the damages recoverable by the Appellant would be $42,500/-.

Appeal allowed.

Solicitors: *Murphy & Dunbar; Tan, Rajah & Cheah.*

RE K.E. HILBORNE

[O.C.J. (Wee Chong Jin C.J., Kulasekaram and Thean JJ.) February 21, 1984]
[Singapore – Originating Summons No. 741 of 1983]

Legal Profession – Advocate & Solicitor – Solicitor asked to show cause why he should not be dealt with consequent on a report of the Disciplinary Committee – Failure to appear to show cause – Legal Profession Act (Cap. 217), s. 84.

In this case the Disciplinary Committee appointed under the provisions of the Legal Profession Act, found that the respondent marched unannounced and without prior appointment to the inner private chambers of the late Mr. Justice D'Cotta in the absence of the solicitors for the other side and was discourteous, rude and insolent to the late Judge. The Disciplinary Committee also found that the respondent uttered a threat to report the late Judge to "high authority" and that he addressed the late Judge in an angry tone of voice. The respondent was asked to show cause why he should not be dealt with under the provisions of section 84 of the Legal Profession Act (Cap. 217) but he failed to appear to show cause under the show cause order.

Held: having regard to the findings of the Disciplinary Committee and the respondent not having appeared in response to the show cause order, the court found the respondent's conduct to be such as to come within the provisions of section 84(2)(h) of the Legal Profession Act. The conduct of the respondent deserved the maximum punishment provided under section 84 and it was ordered that he be struck off the Roll of the court.

ORIGINATING SUMMONS.

Sachi Saurajen for the Law Society.

Respondent not appearing.

Wee Chong Jin C.J. (delivering oral Judgment of the Court): The Respondent, having been asked to show cause why he should not be dealt with under the provisions of section 84 of the Legal